v. *Astor* (1844) 2 How. 319, 343. In the principal case no right of property was involved, for while in England it is held that the right to a penalty or forfeiture created by statute is vested, 1 Chitty Crim. Law, 742, in this country such a right is considered only inchoate, to become vested by judgment. *Morris* v. *Crocker* (1851) 13 How. 429; *Bank of St. Mary's* v. *State* (1853) 12 Ga. 475, 494. But the maxim expresses a policy extending beyond the bounds of property and contract rights; it looks to stability in the law in general (see *Grubbs* v. *State* (1865) 24 Ind 295; *Fisher* v. *Horicon Iron Co.* (1860) 10 Wis. 351). and in cases beyond these bounds there should also be not only clear proof that the former decision was wrong, but in addition, strong reasons for a change. There seems to be little room for doubt that the phrase received a correct interpretation in *Suydam* v. *Smith*, supra. This interpretation having received the legislative sanction, it would seem that the court in the principal case has controverted the legislative intent. The reasons of policy which influenced the court in its later decision should have concerned only the legislature. See *Railroad* v. *County Court* (Tenn. 1854) 1 Sneed 637, 668.

ADMISSION OF SUICIDAL DECLARATIONS IN TRIALS FOR HOMICIDE.—Neither the text-writers nor the courts agree as to the admissibility of suicidal declarations in trials for homicide. 2 Bishop, Crim. Proc., § 623; McKelvey, Evidence, 140; *Siebert* v. *People* (1892) 143 Ill. 571; *Com.* v. *Trefethen* (1892) 157 Mass. 180. Some courts, influenced by Bishop, supra, have excluded the evidence as hearsay, not coming within any of the exceptions to the rule as to res gesta, dying declarations, or statements made in the presence of the defendant so as to influence his conduct, *Siebert* v. *People*, supra; *State* v. *Fitzgerald* (1895) 130 Mo. 407; nor as to exclamations of pain or statements concerning health. *State* v. *Punshon* (1894) 124 Mo. 448. It is clear that the excluded declarations do not come within any of these exceptions, or even within the expanded res gesta rule, 15 Am. L. R. 71; *State* v. *Hayward* (1895) 62 Minn. 474, though similar statements may constitute res gesta. 2 Bishop, Crim. Proc., § 626; So far the cases are sound. But the courts erred in assuming that to be admitted declarations of a deceased person must fall within one of the exceptions named. Declarations of a deceased testator may always be shown on questions as to his mental capacity or sanity; *Waterman* v. *Whitney* (1854) 11 N. Y. 157; or to show his intention as to the disposition of property, *Doe* d *Shallcross* v. *Palmer* (1851) 16 Q. B. 747. And, entirely aside from any proper application of the res gesta rule, 1 Greenleaf, 16th ed., § 162, threats either of the defendant or of the deceased, are admitted where they tend to establish a design or plan, *Stokes* v. *People* (1873) 53 N. Y. 164; *Rex* v. *Hagan* (1873) 12 Cox C. C. 357, and this principle is extended to include expressions of a mere hostile desire to see a person. *State* v. *Horne* (1872) 9 Kan. 123. The courts excluding the evidence often misconceive its purpose, treating it as if offered to prove the act of suicide, or the state of mind immediately accompanying the act, whereas its real object is to show, as an evidential fact, the existence of a design. Where this fact is to be proved the declarations of a person, living or dead, should always be evidence; *Insurance Co.* v.

Hillman (1892) 145 U. S. 285; *Jacobs* v. *Whitman* (1852) 10 Cush. 255; and whether regarded as entirely outside the hearsay rule, McKelvey, Evidence, § 140, or within one of its exceptions, 1 Greenleaf, 16th ed. §§ 162a, 162c, they should be admitted. 1 Wigmore, Treatise on Evidence, §§ 113, 143, 144. As pointed out in *Insurance Co.* v. *Moseley* (1869) 8 Wall. 397, "whenever the bodily or mental feelings of an individual are material to be proved, the usual expressions of such feelings are original and competent evidence * * * Such declarations are regarded as acts and are as competent as any other testimony when relevant to the issue. Their truth or falsity is an enquiry for the jury." Expressly overruling an earlier case, *Com.* v. *Felch* (1882) 132 Mass. 22, on the authority of which *Siebert* v. *People*, supra, was decided, this view was adopted in a leading Massachusetts case, and expressions showing a suicidal intention were admitted. *Com.* v. *Trefethen*, supra.

In a recent Connecticut case the court admitted such evidence but it failed to agree with the Ohio court as to what declarations might be shown. *Blackburn* v. *State* (1872) 23 Ohio St. 146; *State* v. *Kelly* (Conn. 1904) 58 Atl. 705. This is a question of relevancy. In the Connecticut case the defendant, on trial for the murder of his wife, offered to show by her declarations a plan to commit suicide. The court, appearing to work on the theory that the existence of a plan or design could be shown only by declarations made just before or at the moment of the act, excluded, as too remote, all evidence made more than two months prior, and so, though denying it in terms, really made time the test of admissibility. But the intention to commit suicide might be of so long standing as to amount to a suicidal mania, and the excluded expressions might best establish it. Such a plan would be relevant evidence. 1 Wigmore Treatise on Evidence § 102. Of course, if the declarations are to establish the ultimate fact, or are introduced with some evidential fact, as part of the res gesta, 2 Bishop Crim. Proced. §§ 626, 627, time may be vital, 3 COLUMBIA LAW REVIEW 351, but in dealing with declarations showing a plan or design time alone has little or no value. *State* v. *Adams* (1882) 76 Mo. 358. The courts have admitted threats made from one to nine years before the crime charged was committed, *Abbott* v. *Com.* (Ky. 1902) 68 S. W. 124; *Com.* v. *Holmes* (1892) 157 Mass. 233, and mere statements, not threats, made three years prior to the act, have been allowed. *Com.* v. *Robinson* (1888) 146 Mass. 571. So, while the exclusion of such declarations must be left to the sound discretion of the court; *Com.* v. *Trefethen*, supra; *Com.* v. *Holmes*, supra; the exclusion should be made with the understanding that lapse of time goes only to the weight and not to the relevancy of the evidence. *State* v. *Bradley* (1892) 64 Vt. 466; *Redd* v. *State* (1881) 68 Ala. 492. This was the holding as to suicidal declarations in the *Blackburn* case, and in so far as the Connecticut court overlooks this principle, its decision seems unsound.

IMPLIED CONTRACTS IN ASSUMPTION OF RISK.—The general doctrine is almost universally recognized in England and the United States that upon contracting for service a servant assumes all ordinary risks incident to the business and all risks arising from the negligence of his fellow servants. In a recent damage case the Supreme Court